

AMENDED IN ASSEMBLY JULY 16, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE MARCH 19, 2015

SENATE BILL

No. 209

Introduced by Senator Pavley

February 11, 2015

An act to amend Sections 607, 2207, 2714, 2733, 2770, 2772, 2773.1, 2774, 2774.1, 2774.4, and 2776 of, and to add Sections 2006.5, 2736, 2772.1, and 2773.4 to, the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 209, as amended, Pavley. Surface mining: inspections: financial assurances: reclamation plans.

(1) Existing law establishes the Office of Mine Reclamation within the Department of Conservation. Existing law requires the State Mining and Geology Board to impose, by regulation, an annual reporting fee on the operators of all active and idle mining operations. Existing law requires the maximum amount of the annual fee imposed on each mining operation to not exceed \$4,000. Existing law limits the maximum amount of the total revenue generated from the reporting fee to no more than \$3,500,000, as specified.

This bill would instead establish the Division of Mines within the department under the direction of the Supervisor of Mines and Reclamation. The bill also would raise the maximum amount of the annual reporting fee to \$10,000 per mining operation, except as

specified. The bill would raise the maximum amount of the total revenue generated from the reporting fee to \$8,000,000, as specified.

(2) The Surface Mining and Reclamation Act of 1975 prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, a permit is obtained from, a specified reclamation plan is submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation of the surface mining operation.

This bill would revise and recast provisions of the act related to the approval of reclamation plans and, among other things, would require a reclamation plan filed by an operator of a surface mining operation with a lead agency to include specified reclamation maps; require a lead agency, when submitting a proposed final reclamation plan to the Director of Conservation, to incorporate specified items of information and documents in the submitted reclamation plan within certain timeframes; and require the director to take certain actions upon receiving a proposed final reclamation plan. By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill also would require a lead agency or the board to conduct a specified public hearing if the lead agency has evidence that an operator is financially incapable of performing reclamation in accordance with its approved reclamation plan or that the operator has abandoned a surface mining operation without completing reclamation and to take appropriate actions to seize the operator's financial assurances.

This bill would revise and recast provisions of the act related to the proof of financial assurances, as defined, and, among other things, would require an operator to establish an appropriate financial assurance mechanism within 30 days of a sale or transfer of a surface mining operation; require a lead agency to submit a surface mining operation's proposed financial assurance cost estimate with a specified report to the director for review, as specified; and require the director to take certain actions upon receiving a financial assurance cost estimate from a lead agency. By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill would require the Department of Conservation and the board, in consultation with *the Board of for Professional Engineers and Engineers, Land Surveyors, and Geologists*, to adopt regulations that set forth the minimum qualifications for a person conducting an

inspection of a surface mining operation, as specified. The bill also would require the department to establish, no later than July 1, 2016, a training program for all surface mine inspectors, as specified.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 607 of the Public Resources Code is
2 amended to read:

3 607. The work of the department shall be divided into at least
4 the following:

- 5 (a) California Geological Survey.
- 6 (b) Division of Oil, Gas, and Geothermal Resources.
- 7 (c) Division of Land Resource Protection.
- 8 (d) Division of Mines.

9 SEC. 2. Section 2006.5 is added to the Public Resources Code,
10 to read:

11 2006.5. "Supervisor of Mines and Reclamation" means the
12 individual directing the Division of Mines established pursuant to
13 subdivision (d) of Section 607.

14 SEC. 3. Section 2207 of the Public Resources Code is amended
15 to read:

16 2207. (a) The owner or the operator of a mining operation
17 within the state shall forward to the director annually, not later
18 than a date established by the director, upon forms approved by
19 the board from time to time, a report that identifies all of the
20 following:

- 21 (1) The name, address, and telephone number of the person,
22 company, or other owner of the mining operation.
- 23 (2) The name, address, and telephone number of a designated
24 agent who resides in this state, and who will receive and accept
25 service of all orders, notices, and processes of the lead agency,
26 board, director, or court.

(3) The location of the mining operation, its name, its mine number as issued by the Division of Mines or the director, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7 ½-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

(8) Proof of annual inspection by the lead agency.

(9) Proof of the most recently approved financial cost estimate and the approved financial assurance cost mechanism.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

(14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.

(15) The total production for each mineral commodity produced during the previous year.

(16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

(b) (1) Every year, not later than the date established by the director, the person submitting the report pursuant to subdivision (a) shall forward to the lead agency, upon forms furnished by the board, a report that provides all of the information specified in subdivision (a).

(2) The owner or operator of a mining operation shall allow access to the property to any governmental agency or the agent of any company providing financial assurances in connection with the reclamation plan in order that the reclamation can be carried

1 out by the entity or company, in accordance with the provisions
2 of the reclamation plan.

3 (c) Subsequent reports shall include only changes in the
4 information submitted for the items described in subdivision (a),
5 except that, instead of the approved reclamation plan, the reports
6 shall include any reclamation plan amendments approved during
7 the previous year. The reports shall state whether review of a
8 reclamation plan, financial assurances, or an interim management
9 plan is pending under subdivision (b) or (h) of Section 2770, or
10 whether an appeal before the board or lead agency governing body
11 is pending under subdivision (e) or (h) of Section 2770. The
12 director shall notify the person submitting the report and the
13 owner's designated agent in writing that the report and the fee
14 required pursuant to subdivision (d) have been received, specify
15 the mining operation's mine number if one has not been issued by
16 the Division of Mines, and notify the person and agent of any
17 deficiencies in the report within 90 days of receipt. That person
18 or agent shall have 30 days from receipt of the notification to
19 correct the noted deficiencies and forward the revised report to the
20 director and the lead agency. Any person who fails to comply with
21 this section, or knowingly provides incorrect or false information
22 in reports required by this section, may be subject to an
23 administrative penalty as provided in subdivision (c) of Section
24 2774.1.

25 (d) (1) The board shall impose, by regulation, pursuant to
26 paragraph (2), an annual reporting fee on, and method for collecting
27 annual fees from, each active or idle mining operation. The
28 maximum fee for any single mining operation may not exceed ten
29 thousand dollars (\$10,000) annually and may not be less than one
30 hundred dollars (\$100) annually, as adjusted for the cost of living
31 as measured by the California Consumer Price Index for all urban
32 consumers, calendar year averages, using the percentage change
33 in the previous year, except that the maximum fee for any single
34 mining operation shall not exceed six thousand dollars (\$6,000)
35 in the 2016–17 fiscal year and eight thousand dollars (\$8,000) in
36 the 2017–18 fiscal year.

37 (2) (A) The board shall adopt, by regulation, a schedule of fees
38 authorized under paragraph (1) to cover the department's cost in
39 carrying out this section and Chapter 9 (commencing with Section
40 2710), as reflected in the Governor's proposed Budget, and may

1 adopt those regulations as emergency regulations. In establishing
2 the schedule of fees to be paid by each active and idle mining
3 operation, the fees shall be calculated on an equitable basis
4 reflecting the size and type of operation. The board shall also
5 consider the total assessed value of the mining operation, the
6 acreage disturbed by mining activities, and the acreage subject to
7 the reclamation plan.

8 (B) Regulations adopted pursuant to this subdivision shall be
9 adopted by the board in accordance with the Administrative
10 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
11 Part 1 of Division 3 of Title 2 of the Government Code). The
12 adoption of any emergency regulations pursuant to this subdivision
13 shall be considered necessary to address an emergency and shall
14 be considered by the Office of Administrative Law to be necessary
15 for the immediate preservation of the public peace, health, safety,
16 and general welfare.

17 (3) The total revenue generated by the reporting fees may not
18 exceed, and may be less than, the amount of eight million dollars
19 (\$8,000,000), as adjusted for the cost of living as measured by the
20 California Consumer Price Index for all urban consumers, calendar
21 year averages, using the percentage change in the previous year,
22 beginning with the 2016–17 fiscal year and annually thereafter. If
23 the director determines that the revenue collected during the
24 preceding fiscal year was greater or less than the cost to operate
25 the program, the board shall adjust the fees to compensate for the
26 overcollection or undercollection of revenues.

27 (4) (A) The reporting fees established pursuant to this
28 subdivision shall be deposited in the Mine Reclamation Account,
29 which is hereby created. Any fees, penalties, interest, fines, or
30 charges collected by the director or board pursuant to this chapter
31 or Chapter 9 (commencing with Section 2710) shall be deposited
32 in the Mine Reclamation Account. The money in the account shall
33 be available to the department and board, upon appropriation by
34 the Legislature, for the purpose of carrying out this section and
35 complying with Chapter 9 (commencing with Section 2710), which
36 includes, but is not limited to, classification and designation of
37 areas with mineral resources of statewide or regional significance,
38 reclamation plan and financial assurance review, mine inspection,
39 and enforcement.

(B) (i) In addition to reporting fees, the board shall collect five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver mined within the state and shall deposit the fees collected in the Abandoned Mine Reclamation and Minerals Fund Subaccount, which is hereby created in the Mine Reclamation Account. The department may expend the moneys in the subaccount, upon appropriation by the Legislature, for only the purposes of Section 2796.5 and as authorized herein for the remediation of abandoned mines.

(ii) Notwithstanding subdivision (j) of Section 2796.5, fees collected pursuant to clause (i) may also be used to remediate features of historic abandoned mines and lands that they impact. For the purposes of this section, historic abandoned mines are mines for which operations have been conducted before January 1, 1976, and include, but are not limited to, historic gold and silver mines.

(5) In case of late payment of the reporting fee, a penalty of not less than one hundred dollars (\$100) or 10 percent of the amount due, whichever is greater, plus interest at the rate of 1 ½ percent per month, computed from the delinquent date of the assessment until and including the date of payment, shall be assessed. New mining operations that have not submitted a report shall submit a report prior to commencement of operations. The new operation shall submit its fee according to the reasonable fee schedule adopted by the board, and the month that the report is received shall become that operation's anniversary month.

(e) The lead agency, or the board when acting as the lead agency, may impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this chapter and Chapter 9 (commencing with Section 2710).

(f) For purposes of this section, "mining operation" means a mining operation of any kind or character whatever in this state, including, but not limited to, a mining operation that is classified as a "surface mining operation" as defined in Section 2735, unless excepted by Section 2714. For the purposes of fee collections only, "mining operation" may include one or more mines operated by a single operator or mining company on one or more sites, if the total annual combined mineral production for all sites is less than 100 troy ounces for precious metals, if precious metals are the primary mineral commodity produced, or less than 100,000 short

1 tons if the primary mineral commodity produced is not precious
2 metals.

3 (g) Any information in reports submitted pursuant to subdivision
4 (a) that includes or otherwise indicates the total mineral production,
5 reserves, or rate of depletion of any mining operation may not be
6 disclosed to any member of the public, as defined in subdivision
7 (b) of Section 6252 of the Government Code. Other portions of
8 the reports are public records unless excepted by statute. Statistical
9 bulletins based on these reports and published under Section 2205
10 shall be compiled to show, for the state as a whole and separately
11 for each lead agency, the total of each mineral produced therein.
12 In order not to disclose the production, reserves, or rate of depletion
13 from any identifiable mining operation, no production figure shall
14 be published or otherwise disclosed unless that figure is the
15 aggregated production of not less than three mining operations. If
16 the production figure for any lead agency would disclose the
17 production, reserves, or rate of depletion of less than three mining
18 operations or otherwise permit the reasonable inference of the
19 production, reserves, or rate of depletion of any identifiable mining
20 operation, that figure shall be combined with the same figure of
21 not less than two other lead agencies without regard to the location
22 of the lead agencies. The bulletin shall be published annually by
23 June 30 or as soon thereafter as practicable.

24 (h) The approval of a form by the board pursuant to this section
25 is not the adoption of a regulation for purposes of the
26 Administrative Procedure Act (Chapter 3.5 (commencing with
27 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
28 Code) and is not subject to that act.

29 SEC. 4. Section 2714 of the Public Resources Code is amended
30 to read:

31 2714. This chapter does not apply to any of the following
32 activities:

33 (a) Excavations or grading of lands conducted for farming.

34 (b) Onsite excavation and onsite earthmoving activities that are
35 integral and necessary for the construction of structures and that
36 are undertaken to prepare a site for the construction of those
37 structures, including landscaping or other land improvements
38 associated with those structures, including the related excavation,
39 grading, compaction, or the creation of fills, road cuts, and

1 embankments, whether or not surplus materials are exported from
2 the site, subject to all of the following conditions:

3 (1) All required permits for the construction and any associated
4 landscaping or related land improvements have been approved by
5 a public agency in accordance with applicable provisions of state
6 law and locally adopted plans and ordinances, including, but not
7 limited to, the California Environmental Quality Act (Division 13
8 (commencing with Section 21000)).

9 (2) The lead agency's approval of the construction project
10 included consideration of the onsite excavation and onsite
11 earthmoving activities pursuant to the California Environmental
12 Quality Act (Division 13 (commencing with Section 21000)).

13 (3) The approved construction project is consistent with the
14 general plan or zoning of the site.

15 (4) Surplus materials shall not be exported from the site unless
16 and until actual construction work has commenced and shall cease
17 if it is determined that construction activities have terminated, have
18 been indefinitely suspended, or are no longer being actively
19 pursued.

20 (c) Operation of a plant site used for mineral processing,
21 including associated onsite structures, equipment, machines, tools,
22 or other materials, including the onsite stockpiling and onsite
23 recovery of mined materials, subject to all of the following
24 conditions:

25 (1) The plant site is located on lands designated for industrial
26 or commercial uses in the applicable county or city general plan.

27 (2) The plant site is located on lands zoned industrial or
28 commercial or are contained within a zoning category intended
29 exclusively for industrial activities by the applicable city or county.

30 (3) None of the minerals being processed are being extracted
31 onsite.

32 (4) All reclamation work has been completed pursuant to the
33 approved reclamation plan for any mineral extraction activities
34 that occurred onsite after January 1, 1976.

35 (d) Prospecting for or the extraction of minerals for commercial
36 purposes where the removal of overburden or mineral product
37 totals less than 1,000 cubic yards in any one location and the total
38 surface area disturbed is less than one acre.

1 (e) Surface mining operations that are required by federal law
2 in order to protect a mining claim, if those operations are conducted
3 solely for that purpose.

4 (f) Any other surface mining operations that the board
5 determines to be of an infrequent nature and that involve only
6 minor surface disturbances.

7 (g) The solar evaporation of sea water or bay water for the
8 production of salt and related minerals.

9 (h) Emergency excavations or grading conducted by the
10 Department of Water Resources or the ~~Reclamation~~ Central Valley
11 Flood Protection Board for the purpose of averting, alleviating,
12 repairing, or restoring damage to property due to imminent or
13 recent floods, disasters, or other emergencies.

14 (i) (1) Surface mining operations conducted on lands owned
15 or leased, or upon which easements or rights-of-way have been
16 obtained, by the Department of Water Resources for the purpose
17 of the State Water Resources Development System or flood control,
18 and surface mining operations on lands owned or leased, or upon
19 which easements or rights-of-way have been obtained, by the
20 Central Valley Flood Protection Board for the purpose of flood
21 control, if the Department of Water Resources adopts, after
22 submission to and consultation with, the department, a reclamation
23 plan for lands affected by these activities, and those lands are
24 reclaimed in conformance with the standards specified in
25 regulations of the board adopted pursuant to this chapter. The
26 Department of Water Resources shall provide an annual report to
27 the department by the date specified by the department on these
28 mining activities.

29 (2) Nothing in this subdivision shall require the Department of
30 Water Resources or the Central Valley Flood Protection Board to
31 obtain a permit or secure approval of a reclamation plan from any
32 city or county in order to conduct surface mining operations
33 specified in paragraph (1). Nothing in this subdivision shall
34 preclude the bringing of an enforcement action pursuant to Section
35 2774.1, if it is determined that a surface mine operator, acting
36 under contract with the Department of Water Resources or the
37 ~~Reclamation~~ Central Valley Flood Protection Board on lands other
38 than those owned or leased, or upon which easements or
39 rights-of-way have been obtained, by the Department of Water

Resources or the ~~Reclamation~~ Central Valley Flood Protection Board, is otherwise not in compliance with this chapter.

(j) (1) Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or forest management roads and shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for materials that are, or have been, sold for commercial purposes.

(2) This exemption shall be available only if slope stability and erosion are controlled in accordance with subdivision (f) of Section 3704 and subdivision (d) of Section 3706 of Title 14 of the California Code of Regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and postclosure uses in consultation with the Department of Forestry and Fire Protection.

(k) Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to and necessary for ongoing operations for the extraction of oil or gas that comply with all of the following conditions:

(1) The operations are being conducted in accordance with Division 3 (commencing with Section 3000).

(2) The operations are consistent with any general plan or zoning applicable to the site.

(3) The earthmoving activities are within oil or gas field properties under a common owner or operator.

(4) No excavated materials are sold for commercial purposes.

(l) (1) The immediate excavation or grading of lands affected by a natural disaster for the purpose of restoring those lands to their prior condition.

(2) The immediate removal of material deposited by a flood onto lands being farmed for the purpose of restoring those lands to their prior condition.

SEC. 5. Section 2733 of the Public Resources Code is amended to read:

2733. "Reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage

1 to aquatic or wildlife habitat, flooding, erosion, and other adverse
2 effects from surface mining operations, including adverse surface
3 effects incidental to underground mines, so that mined lands are
4 reclaimed to a usable condition that is readily adaptable for
5 alternate land uses and create no danger to public health or safety.
6 The process may extend to affected lands surrounding mined lands,
7 and may require backfilling, grading, resoiling, revegetation, soil
8 compaction, slope stabilization, or other measures.

9 SEC. 6. Section 2736 is added to the Public Resources Code,
10 to read:

11 2736. “Financial assurance” means an approved current
12 financial assurance cost estimate and a financial assurance
13 mechanism that is at least equal to the current approved financial
14 assurance cost estimate.

15 SEC. 7. Section 2770 of the Public Resources Code is amended
16 to read:

17 2770. (a) Except as provided in this section, a person shall not
18 conduct surface mining operations unless a permit is obtained
19 from, a reclamation plan has been submitted to and approved by,
20 and financial assurances for reclamation have been approved by
21 the lead agency for the operation pursuant to this article.

22 (b) A person with an existing surface mining operation who has
23 vested rights pursuant to Section 2776 and who does not have an
24 approved reclamation plan shall submit a reclamation plan to the
25 lead agency not later than March 31, 1988. If a reclamation plan
26 application is not on file by March 31, 1988, the continuation of
27 the surface mining operation is prohibited until a reclamation plan
28 is submitted to the lead agency.

29 (c) [Reserved]

30 (d) [Reserved]

31 (e) A person who, based on the evidence of the record, can
32 substantiate that a lead agency has either (1) failed to act according
33 to due process or has relied on considerations not related to the
34 specific applicable requirements of Sections 2772, 2773, and
35 2773.1, and the lead agency surface mining ordinance adopted
36 pursuant to subdivision (a) of Section 2774, in reaching a decision
37 to deny approval of a reclamation plan or financial assurances for
38 reclamation, or (2) failed to act within a reasonable time of receipt
39 of a completed application, may appeal that action or inaction to
40 the board.

1 (f) The board may decline to hear an appeal if it determines that
2 the appeal raises no substantial issues related to the lead agency's
3 review pursuant to this section.

4 (g) Appeals that the board does not decline to hear shall be
5 scheduled and heard at a public hearing within 45 days of the filing
6 of the appeal or a longer period as may be mutually agreed upon
7 by the board and the person filing the appeal. In hearing an appeal,
8 the board shall only determine whether the reclamation plan or the
9 financial assurances meet the applicable requirements of Sections
10 2772, 2773, and 2773.1 and the lead agency surface mining
11 ordinance adopted pursuant to subdivision (a) of Section 2774. A
12 reclamation plan or financial assurances determined to meet these
13 requirements shall be approved. A reclamation plan or financial
14 assurances determined not to meet these requirements shall be
15 returned to the person filing the appeal with a notice of deficiencies,
16 who shall be granted once only a period of 30 days, or a longer
17 period mutually agreed upon by the operator and the board, to
18 correct the noted deficiencies and submit the revised reclamation
19 plan or the revised financial assurances to the lead agency for
20 review and approval.

21 (h) (1) Within 90 days of a surface mining operation becoming
22 idle, as defined in Section 2727.1, the operator shall submit to the
23 lead agency for review and approval an interim management plan.
24 The review and approval of an interim management plan shall not
25 be considered a project for purposes of the California
26 Environmental Quality Act (Division 13 (commencing with Section
27 21000)). The approved interim management plan shall be
28 considered an amendment to the surface mining operation's
29 approved reclamation plan for purposes of this chapter. The interim
30 management plan shall provide measures the operator will
31 implement to maintain the site in compliance with this chapter,
32 including, but not limited to, all permit conditions.

33 (2) The interim management plan may remain in effect for a
34 period not to exceed five years, at which time the lead agency shall
35 do one of the following:

36 (A) Renew the interim management plan for an additional period
37 not to exceed five years, which may be renewed for one additional
38 five-year renewal period at the expiration of the first five-year
39 renewal period, if the lead agency finds that the surface mining
40 operator has complied fully with the interim management plan.

1 (B) Require the operator to commence reclamation in accordance
2 with its approved reclamation plan.

3 (3) The financial assurances required by Section 2773.1 shall
4 remain in effect during the period that the surface mining operation
5 is idle. If the surface mining operation is still idle after the
6 expiration of its interim management plan, the surface mining
7 operation shall commence reclamation in accordance with its
8 approved reclamation plan.

9 (4) Within 60 days of the receipt of the interim management
10 plan or a longer period mutually agreed upon by the lead agency
11 and the operator, the lead agency shall review and approve the
12 plan in accordance with its ordinance adopted pursuant to
13 subdivision (a) of Section 2774, so long as the plan satisfies the
14 requirements of this subdivision, and so notify the operator in
15 writing. Otherwise, the lead agency shall notify the operator in
16 writing of any deficiencies in the plan. The operator shall have 30
17 days, or a longer period mutually agreed upon by the operator and
18 the lead agency, to submit a revised plan.

19 (5) The lead agency shall approve or deny approval of the
20 revised interim management plan within 60 days of receipt. If the
21 lead agency denies approval of the revised interim management
22 plan, the operator may appeal that action to the lead agency's
23 governing body, which shall schedule a public hearing within 45
24 days of the filing of the appeal or a longer period mutually agreed
25 upon by the operator and the governing body.

26 (6) Unless review of an interim management plan is pending
27 before the lead agency or an appeal is pending before the lead
28 agency's governing body, a surface mining operation that remains
29 idle for over one year after becoming idle, as defined in Section
30 2727.1, without obtaining approval of an interim management plan
31 shall be considered abandoned and the operator shall commence
32 and complete reclamation in accordance with the approved
33 reclamation plan.

34 (i) An enforcement action that may be brought against a surface
35 mining operation for operating without an approved reclamation
36 plan, financial assurance, or interim management plan shall be
37 held in abeyance pending review pursuant to subdivision (b) or
38 (h), or the resolution of an appeal filed with the board pursuant to
39 subdivision (e), or with a lead agency governing body pursuant to
40 subdivision (h).

1 SEC. 8. Section 2772 of the Public Resources Code is amended
2 to read:

3 2772. (a) The reclamation plan shall be filed with the lead
4 agency, on a form provided by the lead agency, by any person who
5 owns, leases, or otherwise controls or operates on all or any portion
6 of any mined lands and who plans to conduct surface mining
7 operations on the lands.

8 (b) [Reserved]

9 (c) The reclamation plan shall include all of the following
10 information and documents:

11 (1) The name and address of the surface mining operator and
12 the names and addresses of any persons designated by the operator
13 as an agent for the service of process.

14 (2) The anticipated quantity and type of minerals for which the
15 surface mining operation is to be conducted.

16 (3) The proposed dates for the initiation of mining operations
17 and the completion of mining and reclamation of the surface mining
18 operation.

19 (4) The maximum anticipated depth of the surface mining
20 operation.

21 (5) A reclamation plan map or maps that shall include all of the
22 following:

23 (A) Size and legal description of the lands that will be affected
24 by the surface mining operation and the names and addresses of
25 the owners of all surface interests and mineral interests in the lands.

26 (B) Clearly defined and accurately drawn property lines,
27 setbacks, easements, and the reclamation plan boundary.

28 (C) Existing topography and final topography depicted with
29 contour lines drawn at appropriate intervals for the site's
30 conditions.

31 (D) Detailed geologic description of the area of the surface
32 mining operation.

33 (E) Location of railroads, utility facilities, access roads,
34 temporary roads to be reclaimed, and any roads remaining for the
35 approved end use.

36 (F) All maps, diagrams, or calculations that require preparation
37 in accordance with the Professional Engineers Act (Chapter 7
38 (commencing with Section 6700) of Division 3 of the Business
39 and Professions Code), the Geologist and Geophysicist Act
40 (Chapter 12.5 (commencing with Section 7800) of Division 3 of

1 the Business and Professions Code), or the Professional Land
2 Surveyors' Act (Chapter 15 (commencing with Section 8700) of
3 Division 3 of the Business and Professions Code) shall be prepared
4 by ~~a~~ *an appropriately licensed* California-licensed professional,
5 shall include his or her license number and name, and shall bear
6 the signature and seal of the licensee.

7 (6) A description of and a plan for the type of surface mining
8 to be employed and a time schedule that will provide for the
9 completion of surface mining on each segment of the mined lands
10 so that reclamation can be initiated at the earliest possible time on
11 those portions of the mined lands that will not be subject to further
12 disturbance by the surface mining operation.

13 (7) A description of the proposed use or potential uses of the
14 mined lands after reclamation and evidence that all owners of a
15 possessory interest in the land have been notified of the proposed
16 use or potential uses.

17 (8) A description of the manner in which reclamation, adequate
18 for the proposed use or potential uses, will be accomplished,
19 including both of the following:

20 (A) A description of the manner in which known contaminants
21 will be controlled and mining waste will be disposed.

22 (B) A description of the manner in which affected streambed
23 channels and streambanks will be rehabilitated to a condition that
24 minimizes erosion and sedimentation.

25 (9) An assessment of the effect of implementation of the
26 reclamation plan on future mining in the area.

27 (10) A statement that the person submitting the reclamation
28 plan accepts responsibility for reclaiming the mined lands in
29 accordance with the reclamation plan.

30 (11) Any other information that the lead agency may require
31 by ordinance.

32 (d) An item of information or a document required pursuant to
33 this chapter, including subdivision (c), that has already been
34 prepared as part of a permit application for the surface mining
35 operation, or as part of an environmental document prepared for
36 the project pursuant to the California Environmental Quality Act
37 (Division 13 (commencing with Section 21000)), or required as a
38 condition of approval, shall be included in the reclamation plan.
39 Regulatory aspects that are solely of a local concern shall not be
40 included in the reclamation plan. To the extent the information or

document referenced in the reclamation plan is used to meet the requirements of this chapter, including subdivision (c), the information or document shall become part of the reclamation plan and shall be subject to all other requirements of this chapter.

(e) This section does not limit or expand the Supervisor of Mines and Reclamation's authority or responsibility to review a document in accordance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

SEC. 9. Section 2772.1 is added to the Public Resources Code, to read:

2772.1. (a) (1) Prior to approving a surface mining operation's reclamation plan or plan amendments, the lead agency shall submit the proposed final reclamation plan or amendments to the director for review. All documentation for the submission shall be submitted to the director at one time.

(2) An item of information or a document required pursuant to this chapter, including subdivision (c) of Section 2772, that has been prepared as part of a permit application for the surface mining operation, not including aspects that are solely of a local concern, or as part of an environmental document prepared for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) shall be incorporated into the proposed final reclamation plan. An item of information or a document that is incorporated shall be inserted into the corresponding section of the proposed final reclamation plan or attached to the proposed final reclamation plan with a specific reference in the corresponding section of the proposed final reclamation plan. Any information or document incorporated into the proposed final reclamation plan shall become part of the approved reclamation plan and shall be subject to all other requirements of this article.

(3) The lead agency shall certify to the director that the proposed final reclamation plan is a complete submission and is in compliance with all of the following:

(A) The applicable requirements of this chapter, including subdivision (c) of Section 2772.

(B) Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations.

1 (C) The lead agency's surface mining ordinance in effect at the
2 time that the proposed final reclamation plan is submitted to the
3 director for review.

4 (b) (1) The director shall have 30 days from the date of receipt
5 of a proposed final reclamation plan or plan amendments submitted
6 pursuant to subdivision (a) to prepare written comments if the
7 director chooses.

8 (2) If the director determines that the lead agency's submission
9 pursuant to this subdivision (a) is incomplete or that the submission
10 includes maps, ~~diagrams~~ *diagrams*, or calculations that require
11 preparation by ~~a California-licensed~~ *an appropriately licensed*
12 *California-licensed* professional, the director shall return the
13 submission to the lead agency. The director shall identify the
14 incomplete components or those maps, diagrams, or calculations
15 that require completion by ~~a California-licensed~~ *an appropriately*
16 *licensed California-licensed* professional. The review by the
17 director pursuant to paragraph (1) shall not begin until the director
18 receives a complete submission, including maps, diagrams, or
19 calculations prepared by ~~a California-licensed~~ *an appropriately*
20 *licensed California-licensed* professional.

21 (3) (A) The lead agency shall review and evaluate and prepare
22 a written response to the director's comments received pursuant
23 to paragraph (1) describing the disposition of the major issues
24 raised by the comments. The lead agency shall submit the lead
25 agency's response to the director at least 30 days prior to the
26 intended approval of the proposed final reclamation plan or plan
27 amendment. The lead agency's response shall include either of the
28 following:

29 (i) A description of how the lead agency proposes to adopt the
30 director's comments to the proposed final reclamation plan or plan
31 amendment.

32 (ii) A detailed description of the reasons why the lead agency
33 proposes not to adopt the director's comments.

34 (B) Copies of any written comments received and responses
35 prepared by the lead agency pursuant to subparagraph (A) shall
36 be forwarded to the operator.

37 (C) (i) The lead agency shall give the director at least 30 days'
38 notice of the time, place, and date of the hearing at which the
39 proposed final reclamation plan or plan amendment is scheduled
40 to be approved by the lead agency.

1 (ii) If no hearing is required by this chapter, the local ordinance,
2 or other state law, the lead agency shall provide 30 days' notice
3 to the director that the lead agency intends to approve the proposed
4 final reclamation plan or plan amendment.

5 (D) Within 30 days following approval of the reclamation plan,
6 the lead agency shall provide the director notice of the approval
7 and a statement that identifies any additional conditions or other
8 permit requirements imposed upon the surface mining operation.
9 During that time, the department shall retain all of its powers,
10 duties, and authorities pursuant to this chapter. The lead agency
11 shall provide, as soon as practicable, but no later than 60 days after
12 approval of the reclamation plan, both of the following:

13 (i) Certified copies of all maps, diagrams, or calculations signed
14 and sealed by ~~a~~ *an appropriately licensed* California-licensed
15 professional.

16 (ii) A certified copy of the approved reclamation plan
17 incorporating all approved modifications to the proposed final
18 reclamation plan.

19 (4) To the extent there is a conflict between the comments of a
20 trustee agency or a responsible agency that are based on that
21 agency's statutory or regulatory authority and the comments of
22 other commenting agencies that are received by the lead agency
23 pursuant to the California Environmental Quality Act (Division
24 13 (commencing with Section 21000)) regarding a reclamation
25 plan or plan amendments, the lead agency shall consider only the
26 comments of the trustee agency or responsible agency.

27 (c) A lead agency shall notify the director of the filing of an
28 application for a permit to conduct surface mining operations
29 within 30 days of an application being filed with the lead agency.
30 By July 1, 1991, each lead agency shall submit to the director for
31 every active or idle mining operation within its jurisdiction, a copy
32 of the mining permit required pursuant to Section 2774, and any
33 conditions or amendments to those permits. By July 1 of each
34 subsequent year, the lead agency shall submit to the director for
35 each active or idle mining operation a copy of any permit or
36 reclamation plan amendments, as applicable, or a statement that
37 there have been no changes during the previous year. Failure to
38 file with the director the information required ~~under~~ *pursuant to*
39 this section shall be *a* cause for action under Section 2774.4.

(d) This section does not limit or expand the Supervisor of Mines and Reclamation's authority or responsibility to review a document in accordance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

SEC. 10. Section 2773.1 of the Public Resources Code is amended to read:

2773.1. (a) Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(1) Financial assurance mechanisms may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the board pursuant to subdivision (e) that are at least equal to the annual financial assurance cost estimate that the lead agency reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

(3) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

(4) Each financial assurance mechanism shall be made payable to the lead agency and the department. A financial assurance mechanism shall not be released without the written consent of the lead agency and the department. Financial assurance mechanisms that were approved by the lead agency prior to January 1, 1993, and were made payable to the State Geologist shall be considered payable to the department for purposes of this chapter. However, if a surface mining operation has received approval of its financial assurances from a public agency other than the lead agency, the lead agency shall deem those financial assurances adequate for purposes of this section, or shall credit them toward fulfillment of the financial assurances required by this section, if they are made payable to the public agency, the lead agency, and

1 the department and otherwise meet the requirements of this section.
2 In any event, if a lead agency and one or more public agencies
3 exercise jurisdiction over a surface mining operation, the total
4 amount of financial assurances required by the lead agency and
5 the public agencies for any one year shall not exceed that amount
6 which is necessary to perform reclamation of lands remaining
7 disturbed. For purposes of this paragraph, a “public agency” may
8 include a federal agency.

9 (b) (1) If the lead agency has evidence that an operator is
10 financially incapable of performing reclamation in accordance
11 with its approved reclamation land or that the operator has
12 abandoned the surface mining operation without completing
13 reclamation, the lead agency or the board shall conduct a public
14 hearing with notice of the hearing provided to the operator and the
15 department at least 30 days prior to the hearing.

16 (2) If the lead agency or the board, following the public hearing,
17 determines that the operator is financially incapable of performing
18 reclamation in accordance with its approved reclamation plan, or
19 has abandoned its surface mining operation without completing
20 reclamation, either the lead agency or the director shall do all of
21 the following:

22 (A) Notify the operator by personal service or certified mail
23 that the lead agency or the director intends to take appropriate
24 action to seize the financial assurances and specify the reasons for
25 so doing.

26 (B) (i) Proceed to take appropriate action to seize the financial
27 assurances and use the proceeds from the financial assurances to
28 conduct and complete reclamation in accordance with the approved
29 reclamation plan.

30 (ii) If the surface mining operation cannot be reclaimed in
31 accordance with its approved reclamation plan or the financial
32 assurances are inadequate to reclaim in accordance with the
33 approved reclamation plan, the lead agency or the director may
34 use the proceeds of the financial assurances to reclaim or remediate
35 mining disturbances as appropriate for the site conditions, as
36 determined by the lead agency and the director. The proceeds of
37 the financial assurances shall not be used for any other purpose.

38 (iii) The operator is responsible for the costs of conducting and
39 completing reclamation in accordance with the approved
40 reclamation plan or a remediation plan developed pursuant to this

1 section, as determined to be appropriate by the lead agency and
2 director, that are in excess of the proceeds of the financial
3 assurances.

4 (c) Financial assurances shall no longer be required of a surface
5 mining operation, and shall be released, upon written concurrence
6 by the lead agency and the director, which shall be forwarded to
7 the operator, that reclamation has been completed in accordance
8 with the approved reclamation plan. If a *surface* mining operation
9 is sold or ownership is transferred to another person, the existing
10 financial assurances shall remain in force and shall not be released
11 by the lead agency and the director until new financial assurances
12 are secured from the new owner and have been approved by the
13 lead agency in accordance with Sections 2770 and 2773.1. Within
14 30 days of the sale or transfer of the surface mining operation, the
15 new operator shall establish an appropriate financial assurance
16 mechanism and sign a new statement pursuant to paragraph (10)
17 of subdivision (c) of Section 2772.

18 (d) The lead agency shall have primary responsibility to seize
19 financial assurances and to reclaim mine sites under subdivision
20 (b). However, in cases where the board is not the lead agency
21 pursuant to Section 2774.4, the director may act to seize financial
22 assurances and reclaim mine sites pursuant to subdivision (b) only
23 if both of the following occur:

24 (1) The financial incapability of the operator or the abandonment
25 of the mining operation has come to the attention of the director.

26 (2) The lead agency has been notified in writing by the director
27 of the financial incapability of the operator or the abandonment
28 of the mining operation for at least 15 days, the lead agency has
29 not taken appropriate measures to seize the financial assurances
30 and reclaim the mine site, and one of the following has occurred:

31 (A) The lead agency has been notified in writing by the director
32 that failure to take appropriate measures to seize the financial
33 assurances or to reclaim the mine site shall result in actions being
34 taken against the lead agency under Section 2774.4.

35 (B) The director determines that there is a violation that amounts
36 to an imminent and substantial endangerment to the public health,
37 safety, or to the environment.

38 (C) The lead agency notifies the director in writing that its good
39 faith attempts to seize the financial assurances have not been
40 successful.

1 The director shall comply with subdivision (b) in seizing the
2 financial assurances and reclaiming mine sites.

3 (e) The board may adopt regulations specifying financial
4 assurance mechanisms other than surety bonds, irrevocable letters
5 of credit, and trust ~~funds~~; *funds* that the board determines are
6 reasonably available and adequate to ensure reclamation pursuant
7 to this chapter, but these mechanisms shall not include solely
8 financial tests or surety bonds executed by one or more personal
9 sureties. These mechanisms may include reclamation bond pool
10 programs or corporate financial tests, as described in subdivision
11 (f), combined with additional financial assurance mechanisms, as
12 identified in this section, that together ensure the completion of
13 reclamation in accordance with the approved reclamation plan.

14 (f) (1) Corporate financial tests shall provide for no more than
15 75 percent of the financial assurance cost estimate approved within
16 the last year. Use of a financial test shall meet all of the following
17 requirements:

18 (A) Be annually approved by both the lead agency and the
19 director and may be disallowed by either the lead agency or the
20 director.

21 (B) Include an assessment from an independent certified public
22 accountant using generally accepted accounting principles in the
23 United States.

24 (2) Corporate financial tests shall only be allowed after the board
25 adopts a regulation that establishes a comprehensive analysis of a
26 corporation's financial status that includes financial net worth;
27 income; liabilities, including other environmental assurances; and
28 assets located within the United States. The regulation shall include
29 additional measures to provide the lead agency or the director with
30 *the* recovery of costs associated with the full collection and
31 satisfaction of the financial assurance mechanisms.

32 (3) A surface mining operation shall have at least 25 percent of
33 the financial assurance cost estimate or four million dollars
34 (\$4,000,000), whichever is greater, in an acceptable financial
35 assurance mechanism other than a corporate financial test.

36 (g) On or before March 1, 1993, the board shall adopt guidelines
37 to implement this section. The guidelines are exempt from the
38 requirements of the Administrative Procedure Act (Chapter 3.5
39 (commencing with Section 11340) of Part 1 of Division 3 of Title

2 of the Government Code) and are not subject to review by the Office of Administrative Law.

SEC. 11. Section 2773.4 is added to the Public Resources Code, to read:

2773.4. (a) (1) Prior to approving the financial assurances of a surface mining operation pursuant to Sections 2770 and 2773.1, the lead agency shall submit the proposed financial assurance cost estimate, with a statement that it is adequate to reclaim the surface mining operation in accordance with the approved reclamation plan, to the director for review. All documentation for that submission shall be complete and submitted to the director at one time.

(2) If the director determines that the lead agency's submission pursuant to paragraph (1) is incomplete, the director shall return the submission to the lead agency, specifically noting those elements of the cost estimate that are incomplete. The review by the director pursuant to subdivision (b) shall not begin until the director receives a complete submission.

(b) The director shall have 45 days from the date of receipt of a complete financial assurances cost estimate pursuant to subdivision (a) to prepare written comments or request a reassessment if the director chooses.

(c) (1) (A) If the director can demonstrate that the proposed financial assurance cost estimate is inadequate to reclaim the surface mining operation in accordance with the approved reclamation plan, the director may request a reassessment by the lead agency.

(B) If the director requests a reassessment of a financial assurance cost estimate, the lead agency shall reassess and resubmit the proposed financial assurance cost estimate within 45 days of the director's request.

(2) If the lead agency or operator disagrees with the director's request for reassessment, or the director determines that a financial assurance cost estimate resubmitted pursuant to this subdivision remains inadequate, the lead agency, operator, or director may request a review hearing by the board.

(3) Financial assurance costs estimates shall not be approved pending the director's request for reassessment pursuant to this subdivision.

1 (4) Financial assurance cost estimates determined to be
2 inadequate by the board shall be returned to the lead agency for
3 reassessment and resubmission to the director pursuant to this
4 section. Financial assurance cost estimates determined to be
5 adequate by the board may be approved by the lead agency.

6 (d) (1) The lead agency shall prepare a written response to the
7 director's comments, if any, describing the disposition of the major
8 issues raised by the director's comments. The lead agency shall
9 submit its proposed response to the director at least 30 days prior
10 to approval of the financial assurance cost estimate and shall
11 include either of the following:

12 (A) A description of how the lead agency proposes to adopt the
13 director's comments to the financial assurance cost estimate.

14 (B) A detailed description of the reasons why the lead agency
15 proposes not to adopt the director's comments.

16 (2) Copies of any written comments received and responses
17 prepared by the lead agency pursuant to paragraph (1) shall be
18 provided to the operator.

19 (3) (A) The lead agency shall give the director at least 30 days'
20 notice of the time, place, and date of the hearing at which the
21 financial assurance cost estimate is scheduled to be approved by
22 the lead agency.

23 (B) If no hearing is required by this chapter, the local ordinance,
24 or other state law, then the lead agency shall provide 30 days'
25 notice to the director that it intends to approve the financial
26 assurance cost estimate.

27 (4) The lead agency shall send to the director its final response
28 to the director's comments within 30 days of its approval of the
29 financial assurance cost estimate during which time the department
30 retains all of its powers, duties, and authorities pursuant to this
31 chapter.

32 (e) (1) Within 30 days of ~~the lead agency~~ *agency's* approval of
33 the financial assurance cost estimate, the operator shall provide
34 the lead agency and the director an appropriate financial assurance
35 mechanism that is at least equal to the approved financial assurance
36 cost estimate.

37 (2) Within 15 days of receipt of a financial assurance
38 mechanism, the lead agency and the director shall review the
39 financial assurance mechanism to determine if the type of

1 mechanism, including release instructions, complies with the
2 requirements of this chapter.

3 (3) Financial assurance mechanisms determined to be
4 noncompliant with this chapter shall be returned to the operator,
5 with instructions on how to correct the type or release instructions
6 of the financial assurance mechanism.

7 (f) To the extent there is a conflict between the comments of a
8 trustee agency or a responsible agency that are based on that
9 agency's statutory or regulatory authority and the comments of
10 other commenting agencies that are received by the lead agency
11 pursuant to the California Environmental Quality Act (Division
12 13 (commencing with Section 21000)) regarding a financial
13 assurance cost estimate or financial assurance mechanism, the lead
14 agency shall consider only the comments of the trustee agency or
15 responsible agency.

16 (g) The review of existing financial assurances shall not be
17 considered a project for the purposes of the California
18 Environmental Quality Act (Division 13 (commencing with Section
19 21000)).

20 SEC. 12. Section 2774 of the Public Resources Code is
21 amended to read:

22 2774. (a) Every lead agency shall adopt ordinances in
23 accordance with state policy that establish procedures for the
24 review and approval of reclamation plans and financial assurances
25 and the issuance of a permit to conduct surface mining operations,
26 except that any lead agency without an active surface mining
27 operation in its jurisdiction may defer adopting an implementing
28 ordinance until the filing of a permit application. The ordinances
29 shall establish procedures requiring at least one public hearing and
30 shall be periodically reviewed by the lead agency and revised, as
31 necessary, to ensure that the ordinances continue to be in
32 accordance with state policy.

33 (b) (1) The lead agency shall conduct an inspection of a surface
34 mining operation within six months of receipt by the lead agency
35 of the surface mining operation's report submitted pursuant to
36 Section 2207, solely to determine whether the surface mining
37 operation is in compliance with this chapter. A lead agency shall
38 not inspect a surface mining operation less than once in any
39 calendar year. The lead agency shall cause an inspection to be
40 conducted by an individual who qualified pursuant to paragraph

(2), including, but not limited to, a ~~state-licensed~~ *state-licensed* geologist or ~~state-licensed~~ *state-licensed* civil engineer, who is experienced in land reclamation and who has not been employed by a surface mining operation within the jurisdiction of the lead agency in any capacity during the previous 12 months, except that a lead agency employee who is not an independent contractor may inspect surface mining operations within the local agency provided the employee satisfies the provisions of paragraph (2) and subdivision (c). All inspections shall be conducted using a form developed by the department and approved by the board that includes the relevant professional licensing and disciplinary information of the person qualified pursuant to paragraph (2) who conducted the inspection. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall notify the director within 60 days of the date of completion of the inspection that the inspection has been conducted. The inspection notice shall contain a statement regarding the surface mining operation's compliance with this chapter, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operations, if any, are inconsistent with this chapter and those noncompliant aspects that have been corrected following the inspection, with proof of correction. For each remaining noncompliant aspect, the lead agency shall provide to the director a copy of the notice of violation, the notice of violation combined with an order to comply pursuant to Section 2774.1, or a statement that indicates the lead agency does not intend to initiate an enforcement action pursuant to Section 2774.1. If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim management plan pending under subdivision (b) or (h) of Section 2770, or an appeal pending before the board or lead agency governing body under subdivision (e) or (h) of Section 2770, the inspection notice shall so indicate. The lead agency shall forward to the operator a copy of the inspection notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the individual qualified pursuant to paragraph (2).

(2) (A) The department and the board, in consultation with the ~~Board of Professional Engineers and Land Surveyors for Professional Engineers, Land Surveyors, and Geologists~~, shall adopt regulations that set forth the minimum qualifications for a

1 person conducting an inspection of a surface mining operation
2 pursuant to this chapter. The regulations shall delineate those
3 aspects of an inspection that require the inspector to meet state
4 licensure requirements.

5 (B) Beginning January 1 of the year following adoption of the
6 regulations required pursuant to subparagraph (A), but not less
7 than 180 days after adoption, all surface mine inspections shall be
8 performed by a qualified individual.

9 (c) (1) On or before July 1, 2016, the department shall establish
10 a training program for all surface mine inspectors. The program
11 shall be designed to include a guidance document, developed by
12 the department and approved by the board, to provide instruction
13 and recommendations to surface mine inspectors performing
14 inspections pursuant to subdivision (b).

15 (2) The training program shall include no less than four
16 inspection workshops per year, offered by the department, in
17 different regions of the state, to provide practical application of
18 the guidance document material.

19 (3) On and after January 1, 2019, all inspectors shall have on
20 file with the lead agency and the department a certificate of
21 completion of an inspection workshop. An inspector shall attend
22 a workshop no later than five years after the date of his or her most
23 recent certificate.

24 (d) In addition to subdivision (b), lead agencies or the Supervisor
25 of Mines and Reclamation may inspect at any time ~~at~~ a surface
26 mining ~~operations~~ operation to determine if the operation is in
27 compliance with this chapter and Section 2207.

28 (e) The approval of the guidance document by the board
29 pursuant to subdivision (c) is not the adoption of a regulation for
30 the purposes of the Administrative Procedure Act (Chapter 3.5
31 (commencing with Section 11340) of Part 1 of Division 3 of Title
32 2 of the Government Code) and is not subject to that chapter.

33 SEC. 13. Section 2774.1 of the Public Resources Code is
34 amended to read:

35 2774.1. (a) Except as provided in subdivision (i) of Section
36 2770, if the lead agency or the director determines, based upon an
37 annual inspection pursuant to Section 2774, or otherwise confirmed
38 by an inspection of the mining operation, that a surface mining
39 operation is not in compliance with this chapter, the lead agency
40 or the director may notify the operator of that violation by personal

1 service or certified mail. If the lead agency or the director
2 determines that the noted violations cannot be corrected within 30
3 days of the notice, the lead agency shall or the director may
4 combine the notice of violation with an order to comply. If the
5 violation extends beyond 30 days after the date of the lead agency's
6 or the director's notification, the lead agency or the director may
7 issue an order by personal service or certified mail requiring the
8 operator to comply with this chapter or, if the operator does not
9 have an approved reclamation plan or financial assurances, cease
10 all further mining activities.

11 (b) An order to comply issued under subdivision (a) shall take
12 effect 30 days following service unless the operator within that
13 30-day period requests a hearing before the lead agency for orders
14 issued by the lead agency, or the board for orders issued by the
15 director, concerning the alleged violation. An order to comply
16 shall specify which aspects of the surface mine's activities or
17 operations are inconsistent with this chapter, shall specify a time
18 for compliance that the lead agency or director determines is
19 reasonable, not to exceed two years, taking into account the
20 seriousness of the violation and any good faith efforts to comply
21 with applicable requirements, and may include an administrative
22 penalty imposed pursuant to subdivision (c). If a lead agency or
23 the director determines compliance with an order to comply will
24 exceed two years, the board may specify a longer period based on
25 an application and showing of good cause.

26 (c) (1) In an order to comply pursuant to subdivision (b), the
27 lead agency or the director may impose an administrative penalty
28 of not more than five thousand dollars (\$5,000) per day, assessed
29 from the original date of noncompliance with this chapter. The
30 penalty may be imposed administratively by the lead agency or
31 the director. In determining the amount of the administrative
32 penalty, the lead agency or the director shall take into consideration
33 the nature, circumstances, extent, and gravity of the violation or
34 violations, any prior history of violations, the degree of culpability,
35 economic savings, if any, resulting from the violation, and any
36 other matters justice may require.

37 (2) If an operator fails to comply with an order to comply that
38 did not originally impose an administrative penalty, or if an
39 operator fails to submit a report or pay annual fees to the director
40 or lead agency pursuant to Section 2207, the lead agency or director

1 may impose an administrative penalty pursuant to this paragraph.
2 The administrative penalty shall become effective upon issuance
3 of the assessment and payment shall be made to the lead agency
4 or the director within 30 days, unless the operator petitions the
5 legislative body of the lead agency, the board, or the superior court
6 for review as provided in Section 2774.2. An assessment shall be
7 served by personal service or by certified mail upon the operator.

8 (3) Penalties collected by the director shall not be used for
9 purposes other than to cover the reasonable costs incurred by the
10 director in implementing this chapter or Section 2207.

11 (d) If the lead agency or the director determines that the surface
12 mine is not in compliance with this chapter, so that the surface
13 mine presents an imminent and substantial endangerment to the
14 public health or the environment, the lead agency or the Attorney
15 General, on behalf of the director, may seek an order from a court
16 of competent jurisdiction enjoining that operation.

17 (e) Upon a complaint by the director, the department, or the
18 board, the Attorney General may bring an action to recover
19 administrative penalties under this section, and penalties under
20 Section 2207, in any court of competent jurisdiction in this state
21 against any person violating any provision of this chapter or Section
22 2207, or any regulation adopted pursuant to this chapter or Section
23 2207. The Attorney General may bring this action on his or her
24 own initiative if, after examining the complaint and the evidence,
25 he or she believes a violation has occurred. The Attorney General
26 may also seek an order from a court of competent jurisdiction
27 compelling the operator to comply with this chapter and Section
28 2207.

29 (f) (1) The lead agency has primary responsibility for enforcing
30 this chapter and Section 2207. In cases where the board is not the
31 lead agency pursuant to Section 2774.4, enforcement actions may
32 be initiated by the director pursuant to this section only after the
33 violation has come to the attention of the director and either of the
34 following occurs:

35 (A) The lead agency has been notified by the director in writing
36 of the violation for at least 30 days, and has not taken appropriate
37 enforcement action, which may include failing to issue an order
38 to comply within a reasonable time after issuing a notice of
39 violation.

1 (B) The director determines that there is a violation that amounts
2 to an imminent and substantial endangerment to the public health
3 or safety, or to the environment.

4 (2) The director shall comply with this section in initiating
5 enforcement actions.

6 (g) Remedies under this section are in addition to, and do not
7 supersede or limit, any and all other remedies, civil or criminal.

8 SEC. 14. Section 2774.4 of the Public Resources Code is
9 amended to read:

10 2774.4. (a) The board shall exercise some or all of a lead
11 agency's powers under this chapter pursuant to subdivision (c),
12 except for permitting authority and vested rights determinations
13 pursuant to Section 2776, if the board finds that a lead agency has
14 done any of the following:

15 (1) Approved reclamation plans or financial assurances that are
16 not consistent with this chapter.

17 (2) Failed to inspect or cause the inspection of surface mining
18 operations as required by this chapter.

19 (3) Failed to seize the financial assurances and to carry out the
20 reclamation of surface mining operations as required by this
21 chapter.

22 (4) Failed to take appropriate enforcement actions as required
23 by this chapter.

24 (5) Intentionally misrepresented the results of inspections
25 required under this chapter.

26 (6) Failed to submit information to the department as required
27 by this chapter.

28 (b) The board shall conduct a public hearing no sooner than
29 three years after the board has taken action pursuant to subdivision
30 (a) to determine if a lead agency has corrected its deficiencies in
31 implementing and enforcing this chapter and the rules and
32 regulations adopted pursuant to this chapter or has developed a
33 program that will adequately administer this chapter and Section
34 2207. If the board finds sufficient evidence of correction or the
35 development of a program to adequately implement this chapter
36 and Section 2207, the board shall restore to the lead agency some
37 or all of the powers assumed by the board pursuant to subdivision
38 (a).

39 (c) Before taking any action pursuant to subdivision (a), the
40 board shall first conduct a hearing, providing 30 days' notice to

1 the lead agency, and shall determine if the lead agency has engaged
2 in conduct described in subdivision (a). If the board finds that the
3 lead agency has engaged in conduct described in subdivision (a),
4 the board shall do either of the following:

5 (1) (A) Require the lead agency to develop a remedial plan to
6 correct the noted deficiencies. The remedial plan shall describe
7 specific objectives and corresponding processes designed to
8 address, at a minimum, the noted deficiencies and a time that the
9 remedial plan will be fully implemented.

10 (B) The board shall set a hearing to review the completion of
11 the remedial plan consistent with paragraph (2) and subdivisions
12 (d) and (e).

13 (2) Take immediate action pursuant to subdivision (a) and hold
14 a public hearing within the lead agency's area of jurisdiction, upon
15 a 45-day written notice given to the public in at least one newspaper
16 of general circulation within the city or county and directly mailed
17 to the lead agency and to all operators within the lead agency's
18 jurisdiction who have submitted reports as required by Section
19 2207.

20 (d) Affected operators and interested persons have the right at
21 the public hearing to present oral and written evidence on the
22 matter being considered. The board, at the public hearing, may
23 place reasonable limits on the right of affected operators and
24 interested persons to question and solicit testimony.

25 (e) (1) ~~The~~ *If the* board decides to take action pursuant to
26 subdivision (a) and exercise some or all of a lead agency's powers
27 pursuant to this chapter, except for permitting authority and vested
28 rights determinations pursuant to Section 2776, the board shall,
29 based on the record of the public hearing, adopt written findings
30 that explain all of the following:

31 (A) The action to be taken by the board.

32 (B) Why the board decided to take the action.

33 (C) Why the action is authorized by and meets the requirements
34 of subdivision (a).

35 (2) In addition, the findings shall address the significant issues
36 raised or written evidence presented by affected operators,
37 interested persons, the lead agency, or the department and findings
38 from any review of the lead agency's administrative and
39 enforcement program. The transcript of testimony and exhibits,

1 together with all papers and requests filed in the proceedings, shall
2 constitute the exclusive record for decision by the board.

3 (f) If the board finds that the lead agency has not satisfactorily
4 completed the remedial plan prepared pursuant to paragraph (1)
5 of subdivision (c), the board shall follow the procedures set forth
6 in paragraph (2) of subdivision (c) and subdivisions (d) and (e).

7 (g) The lead agency, any affected operator, or any interested
8 person who has presented oral or written evidence at the public
9 hearing before the board pursuant to subdivision (d) may obtain a
10 review of the board's action taken pursuant to subdivision (a) by
11 filing in the superior court a petition for a writ of mandate within
12 30 days following the issuance of the board's decision. Section
13 1094.5 of the Code of Civil Procedure governs judicial proceedings
14 pursuant to this subdivision, except that in every case the court
15 shall exercise its independent judgment. If a petition for a writ of
16 mandate is not filed within the time limits set by this subdivision,
17 the board's action under subdivision (a) shall not be subject to
18 review by any court or agency.

19 SEC. 15. Section 2776 of the Public Resources Code is
20 amended to read:

21 2776. (a) (1) A person who has obtained a vested right to
22 conduct surface mining operations prior to January 1, 1976, shall
23 not be required to secure a permit pursuant to this chapter as long
24 as the vested right continues and as long as no substantial changes
25 are made in the operation except in accordance with this chapter.
26 A person shall be deemed to have vested rights if, prior to January
27 1, 1976, the person has, in good faith and in reliance upon a permit
28 or other authorization, if the permit or other authorization was
29 required, diligently commenced surface mining operations and
30 incurred substantial liabilities for work and materials necessary
31 for the surface mining operations. Expenses incurred in obtaining
32 the enactment of an ordinance in relation to a particular operation
33 or the issuance of a permit shall not be deemed liabilities for work
34 or materials.

35 (2) A lead agency shall maintain records associated with a vested
36 right determination.

37 (b) The reclamation plan required to be filed pursuant to
38 subdivision (b) of Section 2770 shall apply to operations conducted
39 after January 1, 1976, or to be conducted.

1 (c) Nothing in this chapter shall be construed as requiring the
2 filing of a reclamation plan for or the reclamation of mined lands
3 on which surface mining operations were conducted prior to
4 January 1, 1976.

5 SEC. 16. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 a local agency or school district has the authority to levy service
8 charges, fees, or assessments sufficient to pay for the program or
9 level of service mandated by this act, within the meaning of Section
10 17556 of the Government Code.